REMARKS/ARGUMENTS

Status of Claims

Claims 1-3, 7, 9, and 19-35 stand rejected.

Claims 7, 24, and 33 are currently amended.

As such, claims 1-3, 7, 9, and 19-35 are currently pending in the application.

The Applicant hereby requests further examination and reconsideration of the presently claimed application.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

Claims 1, 30, and 35 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Specifically, the Examiner asserted that the specification fails to provide support for the subject matter "the transmitting port is used to transmit other data packets regardless of whether a failure is associated with the destination port", which is recited in claims 1, 30, and 35. The Applicants respectfully traverse the rejection.

The first paragraph of 35 U.S.C. § 112 states: "[t]he specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same." The written description requirement of § 112, first paragraph, ensures that as of the filing date, the inventor conveyed with reasonable clarity to those of skill in the art that he was in possession of the subject matter of the claims. *See Vas-Cath Inc. v. Mahurkar,* 935 F.2d 1555, 19 USPQ2d 1111 (Fed. Cir. 1991). However, the written description requirement of § 112, first paragraph, does not require verbatim support of the claims: "[t]he written description requirement does not require the Appellant to describe exactly the subject matter claimed; instead the description must clearly

allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *Union Oil Co. of Calif. v. Atlantic Richfield Co.*, 208 F.3d 989, 54 USPQ2d 1227, 1232 (Fed. Cir. 2000). Indeed, "if lack of literal support alone were enough to support a rejection under Section 112, then the statement of *In re Lukach* ... that 'the invention claimed does not have to be described *in ipsis verbis* in order to satisfy the description requirement of Section 112,' is empty verbiage." *Id.* at 1235. Instead, "[t]he primary consideration [in § 112, first paragraph, written description cases] is factual and depends on the nature of the invention and the amount of knowledge imparted to those skilled in the art by the disclosure." *Id.* at 1232. Thus, the current standard for the written description requirement of 35 U.S.C. § 112, first paragraph, is not that verbatim support is required, but rather that the written description must allow persons of ordinary skill in the art to recognize that the inventors had possession of the claimed subject matter.

The Applicant respectfully asserts that the specification allows persons of ordinary skill in the art to recognize that the inventors had possession of the claimed subject matter. Specifically, Figs. 2 and 5, along with the accompanying description, describe a situation where the transmitting port is used to transmit other data packets regardless of whether a failure is associated with the destination port. Fig. 2 illustrates the data packet routing method with no service failure in the destination port. For example, the data packets having identifiers 0, 3, and 5 are sent to the destination port number 3 (the transmitting port is number 3 in the second routing table). Fig. 5 illustrates the data packet routing method with a service failure in the destination port. For example, there is a service failure in the destination port number 1. When the destination port number 1 fails, the backup destination port is set. For example, if the backup destination port is the destination port number 3, then the CPU modifies the original port number 1 corresponding to the destination port

number 1 to port number 3 in the second routing table. After receiving the data packet with identifier value 2, the first routing unit determines that the identifier value of the data packet received by the network device is 2. The first routing unit then determines that the port number of the destination port that corresponds to the data packet with identifier value 2 is 1 by searching the first routing table, and transmits the port number 1 of the destination port to the second routing unit by carrying it in the data packet. The second routing unit determines the port number of the destination port is 1 from the received data packet, and determines the port number of the transmitting port which is corresponding to the port number of the destination port is 3 by searching the second routing table saved by itself, and then transmits the data packet via the destination port indicated by the port number 3 of the transmitting port. *See* the specification, pp. 5-10.

Accordingly, it can be seen from Figs. 2 and 5 that the transmitting port 3 is used to transmit data packets with identifier values 2 and 4, as well as the data packets with identifier values 0, 3, and 5 (corresponding to destination port number 3) when the destination port 1 fails. Even when there is no service failure associated with the destination port number 1, the transmitting port (port number 3) corresponding to the destination port number 3 transmits the data packets with identifier values 0, 3, and 5 (other data packets). In other words, Figs. 2 and 5 and their accompanying description describe a situation where the transmitting port is used to transmit other data packets regardless of whether a failure is associated with the destination port. As such, the specification provides support for claims 1, 30, and 35 under the written description requirement of § 112, and consequently the § 112 rejections of claim 1, 30, and 35 should be withdrawn.

Claim Rejections – 35 U.S.C. § 102

Claims 7, 9, 26, 27, and 31-34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication 2005/0028216 (*Vogal*). Claims 9, 26, 27, and 31-33 depend from independent claim 7, thus claims 7, 9, 26, 27, and 31-34 stand or fall on the application of *Vogal* to independent claims 7 and 34. According to MPEP § 2131, " [a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." The Applicant respectfully asserts that *Vogal* fails to teach each and every element of independent claims 7 and 34, and consequently fails to anticipate claims 7, 9, 26, 27, and 31-34.

Vogal fails to anticipate claims 7, 9, 26, 27, and 31-34 because *Vogal* fails to teach a first relationship between a data packet identifier and a destination port in a first routing table and a second relationship between the destination port and a transmitting port in a second table. Claims 7 and 34 read:

> 7. A network device, comprising:
> a processor;
> a first routing unit; and
> a second routing unit,
> wherein the processor is configured to communicate with the first routing unit and the second routing unit,
> wherein the first routing unit is configured to save **a first relationship between a data packet identifier and a destination port in a first routing table**, and identify the destination port corresponding to the data packet identifier from the first routing table after receiving a data packet, and
> wherein the second routing unit is configured to save **a second relationship between the destination port and a transmitting port in a second table**, and **transmit the data packet via the transmitting port corresponding to the destination port based on the second relationship**.
>
> 34. A device comprising:
> a first routing unit configured to save **a first relationship between a data packet identifier and a destination port in a first routing table**; and
> a second routing unit configured to save **a second relationship between the destination port and a transmitting port in a second routing table**.

(Emphasis added). As shown above, claims 7 and 34 require a first relationship between a data packet identifier and a destination port in a first routing table and a second relationship between the destination port and a transmitting port in a second table. In contrast, ***Vogel* only teaches the first routing table, not the second routing table**:

> In FIG. 4, the CAM 422 provides **a reference table of data packet identifiers and I/O port 320 destination addresses**. In particular, the CAM 422 is updated by the primary switch controller 310_A, via the out-of band signal paths 317_A, to store a table of the most current destination addresses for the in-band data packets corresponding to each video session. Thus, the CAM 422 table is used for determining which I/O port the in-band data packets are to be routed. Moreover, the switch controllers 310 update the CAM 422 table via the out-of band signal paths OOB_A 317_A or OOB_B 317_B.
>
> A data packet, such as an MPEG data packet, includes a header having a data packet identifier for routing such packet. **As the data packets are received by an I/O port 320, the I/O port 320 determines which identifier it has received, and then accesses the CAM 422 table to determine from which I/O port 320 the data packet is destined to be transmitted**. Thereafter, the receiving I/O port 320 attaches a header containing the address of the destination I/O port 320 from which the data packet will be streamed to the subscriber.

Vogel, ¶¶ 73 & 74 (emphasis added). As shown above, *Vogel* teaches the first routing table having a first relationship between a data packet identifier and a destination port, **but not the second routing table having a second relationship between the destination port and a transmitting port**. This is because *Vogel* **always** transmits his packets on the destination port identified in the first table. In other words, after performing the destination port lookup in the first table, *Vogel* **does not look at a second table** to determine whether the transmitting port is different than the destination port. Thus, *Vogal* fails to teach a first relationship between a data packet identifier and a destination port in a first routing table and a second relationship between the destination port and a transmitting port in a second table. As such, *Vogel* fails to teach at

least one element of independent claims 7 and 34, and consequently fails to anticipate claims 7, 9, 26, 27, and 31-34.

Claim Rejection – 35 U.S.C. § 103

Claims 1-3, 19-25, 28, 30, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Vogal* in view of U.S. Patent Application Publication 2005/0099983 (*Nakamura*). Claims 25, 28, and 30 depend from independent claim 7, and claim 35 depends from independent claim 34. Independent claims 7 and 34 are allowable for the reasons given above, thus claims 25, 28, 30, and 35 are also allowable. In addition, claims 2, 3, and 19-24 depend from independent claim 1. Thus, claims 1-3 and 19-24 stand or fall on the application of the combination of *Vogal* and *Nakamura* to independent claim 1. The United States Supreme Court in *Graham v. John Deere Co. of Kansas City* noted that an obviousness determination begins with a finding that "**the prior art as a whole in one form or another contains all" of the elements of the claimed invention**. *See Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 22 (U.S. 1966) (emphasis added). The Applicant respectfully asserts that the combination of *Vogal* and *Nakamura* fails to disclose each and every element of independent claim 1, and consequently fails to render obvious claims 1-3 and 19-24.

The combination of *Vogal* and *Nakamura* fails to render obvious claim 1-3 and 19-24 because the combination of *Vogal* and *Nakamura* fails to disclose a first relationship between a data packet identifier and a destination port in a first routing table and a second relationship between the destination port and a transmitting port in a second table. Claim 1 reads:

> 1. A method comprising:
>
> receiving a data packet comprising a data packet identifier;
>
> identifying a destination port corresponding to the data packet identifier from a first routing table, **wherein there is a first relationship between the data packet identifier and the destination port in the first routing table**; and
>
> transmitting the data packet via a transmitting port corresponding to the destination port based on **a second relationship between the destination port and the transmitting port in a second routing table**, wherein the transmitting port is used to transmit other data packets regardless of whether a failure is associated with the destination port.

(Emphasis added). As shown above, claim 1 requires a first relationship between a data packet identifier and a destination port in a first routing table and a second relationship between the destination port and a transmitting port in a second table. As described above, *Vogel* discloses the first routing table having a first relationship between a data packet identifier and a destination port, but not the second routing table having a second relationship between the destination port and a transmitting port. This is because *Vogel* always transmits his packets on the destination port identified in the first table. In other words, after performing the destination port lookup in the first table, ***Vogel* does not look at a second table to determine whether the transmitting port is different than the destination port**. Thus, *Vogal* fails to disclose a first relationship between a data packet identifier and a destination port in a first routing table and a second relationship between the destination port and a transmitting port in a second table. *Nakamura* does not make up for the shortcomings of *Vogal*. As such, the combination of *Vogal* and *Nakamura* fails to disclose at least one element of independent 1, and consequently fails to render obvious claim 1-3 and 19-24.

Entry of Claim Amendments

The amendments to claims 7, 24, and 33 correct grammatical errors in the claims. Thus, the amendments to claims 7, 24, and 33 should be entered.

CONCLUSION

Consideration of the foregoing amendments and remarks, reconsideration of the application, and withdrawal of the rejections and objections is respectfully requested by the Applicant. No new matter is introduced by way of the amendment. It is believed that each ground of rejection raised in the Final Office Action dated November 20, 2009 has been fully addressed. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to telephone the undersigned at the telephone number given below.

Respectfully submitted,
CONLEY ROSE, P.C.

Date: 1/14/10

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